

Stanley E. Smith
City Attorney

Kelley K. Messer
First Assistant City Attorney
Chace Craig
Steven M. Levesque
Trenton M. Dietz
Attorneys



Rita Monterrosa
Litigation Paralegal
Sheletra Hayes
Municipal Court Paralegal
Montana Anderson
Legal Assistant/Paralegal

325-676-6251
325-676-6439 Fax

OFFICE OF THE CITY ATTORNEY

July 26, 2019

Samuel Sinyangwe
MuckRock News
DEPT MR 77199
411A Highland Ave
Somerville, MA 02144-2516

Re: Request for Information

Dear Mr. Sinyangwe:

The City Attorney's Office has reviewed your request received July 12, 2019, by the Abilene Police Department.

Pursuant to Government Code Section 552.301(e-1), enclosed please find a redacted copy of the written comments that our office is submitting to the Office of the Attorney General.

The determination was made to seek an Attorney General's Opinion regarding whether or not the remaining information requested is public information subject to disclosure. The Attorney General should notify you directly of their decision. Should they determine the information must be released; the City will then contact you regarding the costs for copying said information. You will be provided an estimate for the public information responsive to your request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kelley Messer'. The signature is written in a cursive, flowing style.

Kelley Messer
First Assistant City Attorney

REQUEST FOR INFORMATION

I. The Request

On July 12, 2019, the Abilene Police Department (“APD”) received a request from Samuel Sinyangwe. The request is enclosed as Exhibit A. Regarding information responsive to item numbers 1, 2, 5 and 6 in the request for information, the requestor will be provided an estimate. The Attorney General has previously made a determination regarding which portions of the Abilene Police Department’s Standard Operating Procedures are public information, which is responsive to number 5.

Included as Exhibit B are the remaining items potentially responsive to this request or, as specifically noted herein, representative samples of the documents responsive to the request. Because both the Attorney General’s Office and Texas case law have determined that not all records in the possession of a governmental entity are public information subject to disclosure, we respectfully request an Attorney General’s Opinion on this particular information.

II. Background Facts

THIS INFORMATION IS BEING REDACTED PURSUANT TO GOVERNMENT CODE SECTION 552.301(e)(1)(a).

III. Reasons for Non-Disclosure

Texas Government Code 552.101 Confidential Information

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Thus, section 552.101 encompasses information made confidential by statute. Statutory confidentiality under section 552.101 generally requires express language providing that certain information is confidential or stating that it shall not be released to the public. *See* Open Records Decision No. 478 at 2 (1987).

Texas Local Government Code Section 143.089 Personnel Files

The pertinent provisions of Texas Local Government Code Section 143.089 read:

- (f) The director or the director’s designee may not release any information contained in a fire fighter’s or police officer’s personnel file without first obtaining the person’s written permission, unless the release of the information is required by law.
- (g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department’s use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall

refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Typically, information in an officer's personnel file as a result of a disciplinary investigation will be classified in one of two ways. If the investigation results in disciplinary action, the records must be maintained in the personnel file by the director of the civil service commission in what is commonly referred to as the (a) file, in reference to Texas Local Government Code Section 143.089(a). Investigations not resulting in disciplinary action, however, are prohibited from being maintained in the civil service personnel file and are instead kept by the department in its own personnel file commonly referred to as the (g) file, in reference to Texas Local Government Code Section 143.089(g).

Texas Local Government Code Chapter 143 designates what constitutes discipline, and it is only suspension, removal, demotion, and uncompensated pay. *See* Tex. Loc. Gov't Code § 143.051-055. No discipline has resulted from complaints made during the requested time period. Therefore, the responsive records regarding civilian complaints are excepted from public disclosure because Section 552.101 excepts information considered confidential by statute, and the requested information is part of officers' personnel file under Section 143.089(g).

Texas Government Code Section 552.108(a) Law Enforcement Records

The pertinent provisions of Texas Government Code Section 552.108(a) read:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

The information responsive to items 7 and 8 of the request for information are investigations that did not result in convictions or deferred adjudications of any officers involved and are therefore excepted under section 552.108(a)(2).

IV. Conclusion

Section 143.089 of the Texas Local Government Code as applied through Section 552.101 of the Texas Government Code excepts some of the requested information from required public disclosure because information maintained in a police department's internal file pursuant to Texas Local Government Code Section 143.089(g) is confidential and should not be released.

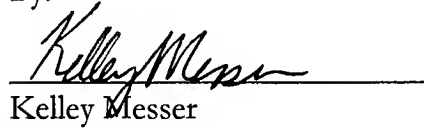
Section 552.108(a)(2) of the Government Code excepts the requested information from required public disclosure because it deals with the detection, investigation, or prosecution of crime only in relation to investigations that did not result in convictions or deferred adjudications.

For the stated reasons, the City requests the Office of the Attorney General issue an opinion that, pursuant to Texas Government Code Sections 552.101 (in conjunction with Texas Local Government Code Section 143.089), and 552.108(a)(2), the requested information is exempt from disclosure.

Respectfully Submitted,

Stanley Smith
City Attorney
State Bar No. 00792816

By:

A handwritten signature in cursive script, appearing to read "Kelley Messer", is written over a horizontal line.

Kelley Messer
First Assistant City Attorney
State Bar No. 24007672